IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9567 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH NARANBHAI PATEL

Versus

GENERAL MANAGER

Appearance:

MR MG NAGARKAR for Petitioner

NOTICE SERVED for Respondent No. 1

NANAVATI & NANAVATI for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/06/2000

ORAL JUDGEMENT

#. Heard the learned advocates.

#. Rule returnable today. Learned advocate Mr.Shukla

appears for the respondents and waives service of rule.

#. The petitioner before this court is the employee of the Rajnagar Textile Mill No.2, the respondent No.1 herein. While he was serving as Junior Assistant (SPG), some complaint came to be lodged against him for which Criminal Case being Special Case No.25 of 1992 has been registered against him. Pending investigation and the prosecution by order dated 4th October, 1991 the petitioner has been suspended from service. Since the prosecution is still pending, suspension also continues. Pending the petition, pay of the petitioner and other such employees has been revised with effect from 1st January, 1991. By order dated 2nd November, 1992 the petitioner has also been given the benefit of revised pay-scale of Rs.2,000 - 3,500/- and his basic pay as on 1st January, 1991 has been fixed at Rs.2,825/-. He has also been given the benefit of increment and his pay with effect from 1st January, 1992 has been fixed at Rs.2,900/-. It is the grievance of the petitioner that though the petitioner's pay has been revised, no effect has been given to the subsistence allowance which is payable to him. Therefore, the petition.

#. It is also submitted that the prosecution has not proceeded further and no evidence has been led by the prosecution thus far. In that view of the matter, by order dated 30th April, 1999 made on application Exh.40, learned Special Judge, Ahmedabad City, has closed the oral evidence by the prosecution. It is, therefore, prayed that the petitioner be allowed to resume duties pending prosecution.

#. On the facts and circumstances of the case, more particularly, when the prosecution has failed to lead any evidence against the petitioner and in view of the passage of time, the impugned order of suspension dated 4th October, 1991 is quashed and set aside. The petitioner will be permitted to resume duties as Junior Assistant (SPG) within a period of one week from today. However, the question of regularisation of the period spent under suspension and the amount of subsistence allowance due and payable to the petitioner may be decided after the prosecution is over.

#. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Parties shall bear their own costs.

(Ms.R.M.Doshit,J)
(pathan)